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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. NO. 688 OF 2006

APPELLANT: Chief Nagar Palika Parishad / Nagar Panchayat, through Chief Municipal Officer, Ambagarh Chowki, District Rajnandgaon (CG)

VERSUS

RESPONDENTS Smt. Jankibai, widow of Mehetar and others.

POST FOR JUDGMENT ON 23-04-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. NO. 688 OF 2006

APPELLANT: **NON APPLICANT NO.1**		Chief Nagar Palika Parishad / Nagar Panchayat, through Chief Municipal Officer, Ambagarh Chowki, District Rajnandgaon (CG)
		VERSUS
RESPONDENTS APPLICANT NO.1	1.	Smt. Jankibai, widow of Mehetar Ram, Nishad, aged about 40 years.
APPLICANT NO.2	2.	Ramchand Nishad, s/o Mehtar Ram Nishad, aged about 21 years.
APPLICANT NO. 3	3.	Lakhanlal Nishad, s/o Mehtar Ram Nishad, aged about 17 years.
APPLICANT NO. 4	4.	Smt. Mangani Bai, widow of Peeluram Nishad, aged about 61 years. Respondent No. 3 minor through her Guardian at Litem, Mother, non-applicant No.1 Smt. Jankibai Respondent No.1,3 and 4 R/o Village Jadutola, Tahsil Ambagarh Chowki, District Rajnandgaon (C.G.) Respondent No.2 R/o Patelpara, Durga Chowk, Behind Civil Court, Pump House, Ambagarh Chowki, District Rajnandgaon (C.G.)
NON-APPLICANT NO.2	5.	Oriental Insurance Company Limited, Registered Office, Oriental House, B.P.No. 70377, A 25/27, Asaf Ali Road, New Delhi, 110002, Division Office Through Divisional Manager, Malviya Nagar, Durg, Tahsil and District Durg (C.G.)

Present :

Shri Alok Bakshi, counsel for the appellant.
Shri Pankaj Agrawal, counsel for respondents No. 1 to 4.

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JUDGMENT
(Delivered on 23 April 2007)

DHIRENDRA MISHRA, J

With the consent of the parties the matter is heard finally.

This appeal under Section 30 of the Workmen's Compensation Act, 1923 (For brevity 'the Act') is directed against the imposition of penalty vide award dated 16.10.2006 passed by Labour Court District, Rajnandgaon, Commissioner for Workmen's Compensation Act, (hereinafter referred to as 'Tribunal') whereby the Tribunal has awarded a sum of Rs.1,82,656/- to the legal representatives of the deceased employee Mehtarram Nishad and also awarded a sum of Rs.54.797/- as penalty at the rate of Rs.30% of the compensation amount.

Respondents No. 1 to 4 filed application for compensation for the death of Mehtarram Nishad who was employee of the appellant, with the averment that he died on 22.2.2004 during the course of his employment. The deceased was driver and he was plying the tractor which was insured with respondent No.5 for the relevant period.

After considering the evidence available on record, the Tribunal held that respondents No.1 to 4/claimants were entitled to receive compensation of Rs.1,82,656/- with interest at the rate of 6% per annum from the date of the application and the non-applicants were held jointly liable. However, since the non-applicant No.2/Insurance Company had insured the vehicle for the relevant time, liability of payment of compensation was fastened upon respondent No. 5/non-applicant No.2. In addition to the above amount a sum of Rs.54,797/- was also awarded as penalty to the applicants/claimants. However, the appellant was made liable to pay the amount of penalty on the ground that the appellant did not make any efforts to ensure that the amount of compensation due to the applicants was paid to them when it fell due.

Learned counsel for the appellant submits that since the tractor in question was insured with respondent No.5/non-applicant No. 2, the Tribunal was not justified in saddling with the liability of payment of penalty upon the appellant. He further argued that before imposing the above penalty, no notice as contemplated in proviso to Section 4-A (3) (b) of the Act was issued and for these reasons the impugned award to the extent of imposition of penalty and making the appellant liable to pay the amount of penalty, cannot be sustained.

On the other hand, learned counsel for the respondents 1 to 4 submitted that taking into consideration the overall conduct of the appellant/employer, the Tribunal was constrained to impose penalty under Section 4-A (3)(b) of the Act and the same does not call for any interference.

I have heard learned counsel for the parties and perused the material available on record.

From perusal of the record, it is found that accident took place on 22.2.2004. The appellant has admitted that on the date of accident, deceased Mehtarram was employed as temporary driver by them, who died in the accident. However, the appellant did not make any effort to ensure that the applicants/claimants were paid compensation which was due to them as per provision of the Act nor any amount was deposited with the Tribunal or paid to them within a month of the accident when the amount fell due to them. On the contrary, the appellant in their reply dated 30.8.2005 contested the claim of the applicants without depositing any sum towards compensation or without making any effort to ensure that the insurer pays the compensation amount to the legal heirs of the deceased employee, by taking baseless and unreasonable plea to avoid rightful compensation to the poor legal heirs. Since the default is attributable exclusively to the employee in belated payment of compensation to the applicants, penalty has rightly not been imposed on the Insurance Company.

So far as imposition of penalty without issuing show cause notice to the appellant is concerned, from perusal of the record it is found that accident occurred during the course of employment of the deceased and even then instead of depositing the compensation within a month, the appellant raised baseless objections and thereby willfully delayed the payment which was due to the legal heirs of the deceased employee. The absence of show cause notice before imposing penalty shall not vitiate the imposition of penalty. The provisions for payment of interest and penalty has been enacted with a view to deter the employer from taking baseless and unreasonable pleas to avoid rightful claim of compensation to the poor workmen.

In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge